

Introduced by Senator Block

February 10, 2015

An act to add Sections 22602 and 22603 to the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 197, as introduced, Block. Finance lenders: commercial loan: referral.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and makes a willful violation of the law a crime. Existing law defines a finance lender as any person who is engaged in the business of making consumer loans or commercial loans. Existing law defines a commercial loan as a loan of a principal amount of \$5,000 or more, or any loan under an open-end credit program, whether secured by either real or personal property, or both, or unsecured, the proceeds of which are intended by the borrower for use primarily for purposes other than personal, family, or household.

This bill would authorize a licensed finance lender to compensate an unlicensed person or company in connection with the referral of one or more prospective borrowers to the licensee for a commercial loan if certain requirements are met, including, but not limited to, the referral leads to the consummation of a commercial loan, the annual percentage rate does not exceed a specified percentage, and the licensed finance lender obtains documentation from the prospective borrower documenting the borrower's commercial status, as specified. The bill would also require a licensed finance lender who receives an application for a commercial loan from a prospective borrower who has been referred by an unlicensed person to provide a specified statement to the borrower regarding the referral arrangement.

By creating new requirements, the willful violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22602 is added to the Financial Code, to
2 read:

3 22602. A licensee that is a finance lender may pay
4 compensation to an unlicensed person or company in connection
5 with the referral of one or more prospective borrowers to the
6 licensee, when all of the following conditions are met:

7 (a) The referral by the unlicensed person leads to the
8 consummation of a commercial loan, as defined in Section 22502,
9 between the licensee and the prospective borrower referred by the
10 unlicensed person.

11 (b) The annual percentage rate of the loan extended to the
12 prospective borrower does not exceed 36 percent.

13 (c) The term of the loan is 12 months or greater.

14 (d) Before approving the loan, the licensee does both of the
15 following:

16 (1) Obtains documentation from the prospective borrower
17 documenting the borrower's commercial status. Examples of
18 acceptable forms of documentation include, but are not limited to,
19 a seller's permit, business license, articles of incorporation, income
20 tax returns showing business income, or bank account statements
21 showing business income.

22 (2) Performs underwriting and obtains documentation to ensure
23 that the prospective borrower has sufficient monthly gross revenue
24 with which to repay the loan pursuant to the loan terms, and does
25 not make a loan if it determines through its underwriting that the
26 prospective borrower's total monthly expenses at the time of
27 origination, including debt service payments on the loan for which
28 the prospective borrower is being considered, exceed the

1 prospective borrower's monthly gross revenue at the time of
2 origination. Examples of acceptable forms of documentation for
3 verifying gross monthly revenue and monthly expenses include,
4 but are not limited to, tax returns, bank statements, and merchant
5 financial statements. If the prospective borrower is a sole proprietor
6 or a corporation and the loan will be secured by a personal
7 guarantee provided by the owner of the corporation, a credit report
8 from at least one consumer credit reporting agency that compiles
9 and maintains files on consumers on a nationwide basis may also
10 be considered.

11 (e) The licensee annually submits information requested by the
12 commissioner regarding the payment of referral fees in the report
13 required pursuant to Section 22159.

14 SEC. 2. Section 22603 is added to the Financial Code, to read:

15 22603. At the time a licensee that is a finance lender receives
16 an application for a commercial loan from a prospective borrower
17 who has been referred by an unlicensed person, it shall provide
18 the following written statement to the prospective borrower, in no
19 smaller than 10-point type, and shall ask the applicant to
20 acknowledge receipt of the statement in writing:

21 "Your loan application has been referred to us by [Name of
22 Unlicensed Person]. If you are approved for the loan, we may pay
23 a fee to [Name of Unlicensed Person] for the successful referral
24 of your loan application. If you wish to report a complaint about
25 this loan transaction, you may contact the Department of Business
26 Oversight, Division of Corporations at 1-866-ASK-CORP
27 (1-866-275-2677), or file your complaint online at
28 www.dbo.ca.gov."

29 SEC. 3. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.